

Introduced by Senator Sher

February 21, 2003

An act to amend Sections 25281 and 25297.1 of the Health and Safety Code, relating to hazardous substances and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1002, as introduced, Sher. Santa Clara Valley Water District.

(1) Existing law generally regulates the storage of hazardous substances in underground storage tanks and requires underground storage tanks that are used to store hazardous substances and that are installed after January 1, 1984, to meet certain requirements. These requirements are required to be implemented by the local agency. Under the existing Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989, every owner of an underground storage tank is required to pay a storage fee for each gallon of petroleum placed in the tank. The fees are required to be deposited in the Underground Storage Tank Cleanup Fund. The money in the fund may be expended by the State Water Resources Control Board, upon appropriation by the Legislature, for various purposes, including paying for an agreement with a local agency for overseeing and abating unauthorized releases. The term local agency is defined for purposes of these provisions as the certified, unified program agency (CUPA), except as specified, which is the only local agency authorized to enforce those provisions.

This bill would define the term "local agency" as the Santa Clara Valley Water District for specified activities taken under the provisions regulating hazardous substances in underground storage tanks and petroleum underground storage tanks. The bill would impose a

state-mandated local program by imposing new duties upon a local agency.

(2) Existing law requires the board to develop and implement a local oversight program for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from underground storage tanks by local agencies. The board is required to enter into an agreement with a local agency to implement the local oversight program. The board is authorized to select only those local agencies that have implemented the provisions regulating underground storage tanks and that collect and transmit to the board a specified surcharge or fees.

This bill would delete the requirement regarding the selection of a local agency and would authorize the board to provide funding to the Santa Clara Valley Water District for oversight costs incurred by the district on and after July 1, 2002, if the the board and the Santa Clara Valley Water District enter into an agreement.

(3) The bill would declare that, due to the unique circumstances pertaining to the Santa Clara Valley Water District that the bill is intended to remedy, a general statute within the meaning of specified provisions of the California Constitution cannot be made applicable and a special statute is necessary.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(5) The bill would declare that it would take effect immediately as an urgency statute.

Vote: ²/₃. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 25281 of the Health and Safety Code is
2 amended to read:

3 25281. For purposes of this chapter, the following definitions
4 apply:

5 (a) “Automatic line leak detector” means any method of leak
6 detection, as determined in regulations adopted by the board, that
7 alerts the owner or operator of an underground storage tank to the



1 presence of a leak. “Automatic line leak detector” includes, but
2 is not limited to, any device or mechanism that alerts the owner or
3 operator of an underground storage tank to the presence of a leak
4 by restricting or shutting off the flow of a hazardous substance
5 through piping, or by triggering an audible or visual alarm, and
6 that detects leaks of three gallons or more per hour at 10 pounds
7 per square inch line pressure within one hour.

8 (b) “Board” means the State Water Resources Control Board.
9 “Regional board” means a California regional water quality
10 control board.

11 (c) “Compatible” means the ability of two or more substances
12 to maintain their respective physical and chemical properties upon
13 contact with one another for the design life of the tank system
14 under conditions likely to be encountered in the tank system.

15 (d) (1) “Certified Unified Program Agency” or “CUPA”
16 means the agency certified by the Secretary for Environmental
17 Protection to implement the unified program specified in Chapter
18 6.11 (commencing with Section 25404) within a jurisdiction.

19 (2) “Participating Agency” or “PA” means an agency that has
20 a written agreement with the CUPA pursuant to subdivision (d) of
21 Section 25404.3, and is approved by the secretary to implement or
22 enforce the unified program element specified in paragraph (3) of
23 subdivision (c) of Section 25404, in accordance with Sections
24 25404.1 and 25404.2.

25 (3) “Unified Program Agency” or “UPA” means the CUPA,
26 or its participating agencies to the extent each PA has been
27 designated by the CUPA, pursuant to a written agreement, to
28 implement or enforce the unified program element specified in
29 paragraph (3) of subdivision (c) of Section 25404. For purposes of
30 this chapter, a UPA has the responsibility and authority, to the
31 extent provided by this chapter and Sections 25404.1 and 25404.2,
32 to implement and enforce only those requirements of this chapter
33 listed in paragraph (3) of subdivision (c) of Section 25404 and the
34 regulations adopted to implement those requirements. ~~After~~
35 *Except as provided in paragraph (2) of subdivision (i), after a*
36 CUPA has been certified by the secretary, the UPA shall be the only
37 local agency authorized to enforce the requirements of this chapter
38 listed in paragraph (3) of subdivision (c) of Section 25404 within
39 the jurisdiction of the CUPA. This paragraph shall not be construed
40 to limit the authority or responsibility granted to the board and the

1 regional boards by this chapter to implement and enforce this
2 chapter and the regulations adopted pursuant to this chapter.

3 (e) “Department” means the Department of Toxic Substances
4 Control.

5 (f) “Facility” means any one, or combination of, underground
6 storage tanks used by a single business entity at a single location
7 or site.

8 (g) “Federal act” means Subchapter IX (commencing with
9 Section 6991) of Chapter 82 of Title 42 of the United States Code,
10 as added by the Hazardous and Solid Waste Amendments of 1984
11 (P.L. 98-616), or as it may subsequently be amended or
12 supplemented.

13 (h) “Hazardous substance” means either of the following:

14 (1) All of the following liquid and solid substances, unless the
15 department, in consultation with the board, determines that the
16 substance could not adversely affect the quality of the waters of the
17 state:

18 (A) Substances on the list prepared by the Director of Industrial
19 Relations pursuant to Section 6382 of the Labor Code.

20 (B) Hazardous substances, as defined in Section 25316.

21 (C) Any substance or material that is classified by the National
22 Fire Protection Association (NFPA) as a flammable liquid, a class
23 II combustible liquid, or a class III-A combustible liquid.

24 (2) Any regulated substance, as defined in subsection (2) of
25 Section 6991 of Title 42 of the United States Code, as that section
26 reads on January 1, 1989, or as it may subsequently be amended
27 or supplemented.

28 (i) (1) “Local agency” means the local agency authorized,
29 pursuant to Section 25283, to implement this chapter, *except as*
30 *provided in paragraph (2).*

31 (2) *For purposes of subdivision (b) of Section 25289, and*
32 *Sections 25296.10 to Section 25297.2, inclusive, and for purposes*
33 *of Chapter 6.75 (commencing with Section 25299.10), local*
34 *agency also includes the Santa Clara Valley Water District.*

35 (j) “Operator” means any person in control of, or having daily
36 responsibility for, the daily operation of an underground storage
37 tank system.

38 (k) “Owner” means the owner of an underground storage tank.

39 (l) “Person” means an individual, trust, firm, joint stock
40 company, corporation, including a government corporation,

partnership, limited liability company, or association. “Person” also includes any city, county, district, the state, another state of the United States, any department or agency of this state or another state, or the United States to the extent authorized by federal law.

(m) “Pipe” means any pipeline or system of pipelines that is used in connection with the storage of hazardous substances and that is not intended to transport hazardous substances in interstate or intrastate commerce or to transfer hazardous materials in bulk to or from a marine vessel.

(n) “Primary containment” means the first level of containment, such as the portion of a tank that comes into immediate contact on its inner surface with the hazardous substance being contained.

(o) “Product tight” means impervious to the substance that is contained, or is to be contained, so as to prevent the seepage of the substance from the containment.

(p) “Release” means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into or on the waters of the state, the land, or the subsurface soils.

(q) “Secondary containment” means the level of containment external to, and separate from, the primary containment.

(r) “Single walled” means construction with walls made of only one thickness of material. For the purposes of this chapter, laminated, coated, or clad materials are considered single walled.

(s) “Special inspector” means a professional engineer, registered pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, who is qualified to attest, at a minimum, to structural soundness, seismic safety, the compatibility of construction materials with contents, cathodic protection, and the mechanical compatibility of the structural elements of underground storage tanks.

(t) “Storage” or “store” means the containment, handling, or treatment of hazardous substances, either on a temporary basis or for a period of years. “Storage” or “store” does not include the storage of hazardous wastes in an underground storage tank if the person operating the tank has been issued a hazardous waste facilities permit by the department pursuant to Section 25200 or granted interim status under Section 25200.5.

- 1 (u) “Tank” means a stationary device designed to contain an
2 accumulation of hazardous substances which is constructed
3 primarily of nonearthen materials, including, but not limited to,
4 wood, concrete, steel, or plastic that provides structural support.
- 5 (v) “Tank integrity test” means a test method capable of
6 detecting an unauthorized release from an underground storage
7 tank consistent with the minimum standards adopted by the board.
- 8 (w) “Tank tester” means an individual who performs tank
9 integrity tests on underground storage tanks.
- 10 (x) “Unauthorized release” means any release of any
11 hazardous substance that does not conform to this chapter,
12 including, but not limited to, an unauthorized release specified in
13 Section 25295.5, unless this release is authorized by the board or
14 a regional board pursuant to Division 7 (commencing with Section
15 13000) of the Water Code.
- 16 (y) (1) “Underground storage tank” means any one or
17 combination of tanks, including pipes connected thereto, that is
18 used for the storage of hazardous substances and that is
19 substantially or totally beneath the surface of the ground.
20 “Underground storage tank” does not include any of the
21 following:
- 22 (A) A tank with a capacity of 1,100 gallons or less that is
23 located on a farm and that stores motor vehicle fuel used primarily
24 for agricultural purposes and not for resale.
- 25 (B) A tank that is located on a farm or at the residence of a
26 person, that has a capacity of 1,100 gallons or less, and that stores
27 home heating oil for consumptive use on the premises where
28 stored.
- 29 (C) Structures, such as sumps, separators, storm drains, catch
30 basins, oil field gathering lines, refinery pipelines, lagoons,
31 evaporation ponds, well cellars, separation sumps, lined and
32 unlined pits, sumps and lagoons. A sump that is a part of a
33 monitoring system required under Section 25290.1, 25291, or
34 25292 and sumps or other structures defined as underground
35 storage tanks under the federal act are not exempted by this
36 subparagraph.
- 37 (D) A tank holding hydraulic fluid for a closed loop mechanical
38 system that uses compressed air or hydraulic fluid to operate lifts,
39 elevators, and other similar devices.



(2) Structures identified in subparagraphs (C) and (D) of paragraph (1) may be regulated by the board and any regional board pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) to ensure that they do not pose a threat to water quality.

(z) “Underground tank system” or “tank system” means an underground storage tank, connected piping, ancillary equipment, and containment system, if any.

(aa) (1) “Unified program facility” means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements of paragraph (3) of subdivision (c) of Section 25404.

(2) “Unified program facility permit” means a permit issued pursuant to Chapter 6.11 (commencing with Section 25404), and that encompasses the permitting requirements of Section 25284.

(3) “Permit” means a permit issued pursuant to Section 25284 or a unified program facility permit as defined in paragraph (2).

SEC. 2. Section 25297.1 of the Health and Safety Code is amended to read:

25297.1. (a) In addition to the authority granted to the board pursuant to Division 7 (commencing with Section 13000) of the Water Code and to the department pursuant to Chapter 6.8 (commencing with Section 25300), the board, in cooperation with the department, shall develop and implement a local oversight program for the abatement of, and oversight of the abatement of, unauthorized releases of hazardous substances from underground storage tanks by local agencies. In implementing the local oversight program, the agreement specified in subdivision (b) shall be between the board and the local agency. The board shall select local agencies for participation in the program from among those local agencies which apply to the board, giving first priority to those local agencies which have demonstrated prior experience in cleanup, abatement, or other actions necessary to remedy the effects of unauthorized releases of hazardous substances from underground storage tanks. ~~The board shall select only those local agencies which have implemented this chapter and that, except as provided in Section 25404.5, have begun to collect and transmit to the board the surcharge or fees pursuant to subdivision (b) of Section 25287.~~

(b) In implementing the local oversight program described in subdivision (a), the board may enter into an agreement with any local agency to perform, or cause to be performed, any cleanup, abatement, or other action necessary to remedy the effects of a release of hazardous substances from an underground storage tank with respect to which the local agency has enforcement authority pursuant to this section. The board may not enter into an agreement with a local agency for soil contamination cleanup or for groundwater contamination cleanup unless the board determines that the local agency has a demonstrated capability to oversee or perform the cleanup. The implementation of the cleanup, abatement, or other action shall be consistent with procedures adopted by the board pursuant to subdivision (d) and shall be based upon cleanup standards specified by the board or regional board.

(c) The board shall provide funding to a local agency that enters into an agreement pursuant to subdivision (b) for the reasonable costs incurred by the local agency in overseeing any cleanup, abatement, or other action taken by a responsible party to remedy the effects of unauthorized releases from underground storage tanks.

(d) The board shall adopt administrative and technical procedures, as part of the state policy for water quality control adopted pursuant to Section 13140 of the Water Code, for cleanup and abatement actions taken pursuant to this section. The procedures shall include, but not be limited to, all of the following:

(1) Guidelines as to which sites may be assigned to the local agency.

(2) The content of the agreements which may be entered into by the board and the local agency.

(3) Procedures by which a responsible party may petition the board or a regional board for review, pursuant to Article 2 (commencing with Section 13320) of Chapter 5 of Division 7 of the Water Code, or pursuant to Chapter 9.2 (commencing with Section 2250) of Division 3 of Title 23 of the California Code of Regulations, or any successor regulation, as applicable, of actions or decisions of the local agency in implementing the cleanup, abatement, or other action.

(4) Protocols for assessing and recovering money from responsible parties for any reasonable and necessary costs incurred by the local agency in implementing this section, as specified in

subdivision (i), unless the cleanup or abatement action is subject to subdivision (d) of Section 25296.10.

(5) Quantifiable measures to evaluate the outcome of a pilot program established pursuant to this section.

(e) Any agreement between the regional board and a local agency to carry out a local oversight program pursuant to this section shall require both of the following:

(1) The local agency shall establish and maintain accurate accounting records of all costs it incurs pursuant to this section and shall periodically make these records available to the board. The Controller may annually audit these records to verify the hourly oversight costs charged by a local agency. The board shall reimburse the Controller for the cost of the audits of a local agency's records conducted pursuant to this section.

(2) The board and the department shall make reasonable efforts to recover costs incurred pursuant to this section from responsible parties, and may pursue any available legal remedy for this purpose.

(f) The board shall develop a system for maintaining a database for tracking expenditures of funds pursuant to this section, and shall make this data available to the Legislature upon request.

(g) (1) Sections 25355.5 and 25356 do not apply to expenditures from the Hazardous Substance Cleanup Fund for oversight of abatement of releases from underground storage tanks as part of the local oversight program established pursuant to this section.

(2) A local agency that enters into an agreement pursuant to subdivision (b), shall notify the responsible party, for any site subject to a cleanup, abatement, or other action taken pursuant to the local oversight program established pursuant to this section, that the responsible party is liable for not more than 150 percent of the total amount of site-specific oversight costs actually incurred by the local agency.

(h) Any aggrieved person may petition the board or regional board for review of the action or failure to act of a local agency, which enters into an agreement pursuant to subdivision (b), at a site subject to cleanup, abatement, or other action conducted as part of the local oversight program established pursuant to this section, in accordance with the procedures adopted by the board or regional board pursuant to subdivision (d).

(i) (1) For purposes of this section, site-specific oversight costs include only the costs of the following activities, when carried out by technical program staff of a local agency and their immediate supervisors:

(A) Responsible party identification and notification.

(B) Site visits.

(C) Sampling activities.

(D) Meetings with responsible parties or responsible party consultants.

(E) Meetings with the regional board or with other affected agencies regarding a specific site.

(F) Review of reports, workplans, preliminary assessments, remedial action plans, or postremedial monitoring.

(G) Development of enforcement actions against a responsible party.

(H) Issuance of a closure document.

(2) The responsible party is liable for the site-specific oversight costs, calculated pursuant to paragraphs (3) and (4), incurred by a local agency, in overseeing any cleanup, abatement, or other action taken pursuant to this section to remedy an unauthorized release from an underground storage tank.

(3) Notwithstanding the requirements of any other provision of law, the amount of liability of a responsible party for the oversight costs incurred by the local agency and by the board and regional boards in overseeing any action pursuant to this section shall be calculated as an amount not more than 150 percent of the total amount of the site-specific oversight costs actually incurred by the local agency and shall not include the direct or indirect costs incurred by the board or regional boards.

(4) (A) The total amount of oversight costs for which a local agency may be reimbursed shall not exceed one hundred fifteen dollars (\$115) per hour, multiplied by the total number of site-specific hours performed by the local agency.

(B) The total amount of the costs per site for administration and technical assistance to local agencies by the board and the regional board entering into agreements pursuant to subdivision (b) shall not exceed a combined total of thirty-five dollars (\$35) for each hour of site-specific oversight. The board shall base its costs on the total hours of site-specific oversight work performed by all participating local agencies. The regional board shall base its costs

on the total number of hours of site-specific oversight costs attributable to the local agency which received regional board assistance.

(C) The amounts specified in subparagraphs (A) and (B) are base rates for the 1990–91 fiscal year. Commencing July 1, 1991, and for each fiscal year thereafter, the board shall adjust the base rates annually to reflect increases or decreases in the cost of living during the prior fiscal year, as measured by the implicit price deflator for state and local government purchases of goods and services, as published by the United States Department of Commerce or by a successor agency of the federal government.

(5) In recovering costs from responsible parties for costs incurred under this section, the local agency shall prorate any costs identifiable as startup costs over the expected number of cases which the local agency will oversee during a 10-year period. A responsible party who has been assessed startup costs for the cleanup of any unauthorized release that, as of January 1, 1991, is the subject of oversight by a local agency, shall receive an adjustment by the local agency in the form of a credit, for the purposes of cost recovery. Startup costs include all of the following expenses:

(A) Small tools, safety clothing, cameras, sampling equipment, and other similar articles necessary to investigate or document pollution.

(B) Office furniture.

(C) Staff assistance needed to develop computer tracking of financial and site-specific records.

(D) Training and setup costs for the first six months of the local agency program.

(6) This subdivision does not apply to costs that are required to be recovered pursuant to Article 7.5 (commencing with Section 25385) of Chapter 6.8.

(1) If the board and the Santa Clara Valley Water District enter into an agreement pursuant to subdivision (b), the board may provide funding to the Santa Clara Valley Water District pursuant to subdivision (d) of Section 25299.51 for oversight costs incurred by the district on and after July 1, 2002.

SEC. 3. The Legislature finds and declares that, because of the unique circumstances applicable only to the Santa Clara Valley Water District, a statute of general applicability cannot be enacted

1 within the meaning of subdivision (b) of Section 16 of Article IV
2 of the California Constitution. Therefore, this special statute is
3 necessary.

4 SEC. 4. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 a local agency or school district has the authority to levy service
7 charges, fees, or assessments sufficient to pay for the program or
8 level of service mandated by this act, within the meaning of
9 Section 17556 of the Government Code.

10 SEC. 5. This act is an urgency statute necessary for the
11 immediate preservation of the public peace, health, or safety
12 within the meaning of Article IV of the Constitution and shall go
13 into immediate effect. The facts constituting the necessity are:

14 In order to protect the health and safety of the citizens of Santa
15 Clara County and the environment from contamination and the
16 threat of contamination, and to continue local investigation and
17 cleanup of groundwater pollution from unauthorized releases
18 from petroleum underground storage tanks, it is necessary that this
19 act take effect immediately.

